No. 28.

IN THE

United States Circuit Court of Appeals.

NINTH CIRCUIT.

April Term, 1892.

WM. H. LAKIN, Plaintiff in Error,

vs.

J. H. ROBERTS, et al., Defendants in Error,

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

H. L. GEAR,
Attorney for Plaintiff in Error.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

WILLIAM H. LAKIN,
Plaintiff in Error,
vs.
J. H. ROBERTS ET AL.,
Defendants in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF.

1. *Construction Sec.* 2320, *U. S. Rev. Stat.*

Sec. 2322, as to rights of possessors must be considered. Also Sec. 441, 453, 458, regulating powers of Land Department as to patents.

See also *U. S. Land Association* vs. *Knight* (142 U. S.), and concurring opinion of Justice Field as to authority of Land Department and conclusiveness of Government survey and patent.

Rules of Land Department issued June 10th, 1872, and rules since issued, uniformly construe statute as regulating *width of surface* of old locations prior to 1872, by mining rules and customs.

Decisions of Land Department treat prior applications under law of 1866, as *an appropriation of the land surveyed as applied for*, and hold that patent is to issue under law of 1872, so as to confer rights thereby given to other lodes in the surface applied for.

Sickel's Mining Dec., pp. 67, 184–187.

Supreme Court confirms ruling of Land Department as to mining claims prior to passage of mining laws being regulated by mining customs and rules.

Glacier Mountain Silver Mining Co. vs. *Willis*, 127 U. S., 471, and cases cited therein.

A location of a mining claim confers property upon the locator, and after application for a patent is made, and time for adverse claim is past, title is held in trust for applicant subject to payment for the land applied for.

Noyes vs. *Mantle*, 127 U. S., 348.

Sullivan vs. *Iron Silver Mining Co.*, decision Feb. 29, 1872.

Dahl vs. *Ranheim*, 132 U. S., 260.

Dahl vs. *Montana Copper Co.*, 132 U. S., 162.

Butte City Smoke House Lode Cases, 12 Pac. Rep., 858.

Talbott vs. *King*, 9 Pac. Rep., 441.
Hamilton vs. *Southern Nev. G. & M. Co.*, 33 Fed., 562.

Rights thus accrued under a prior application and survey could not be intended to be divested by Sec. 2320, nor could the parties be relegated to a new survey, in the face of the express reservation in favor of pending applications, by Sec. 2328.

2. *No Ground to Assail Patent.*

If a patent for public lands of the United States subject to sale should be procured by misrepresentation of facts, and fraud in the land office, the patent is still good as to all the world as against a collateral attack in an action at law, and can only be assailed in equity by the Government or one showing *a better right* to the land patented. No stranger to the title can ever assail it.

Sandford vs. *Sandford*, 139 U. S., 642.
Field vs. *Seabury*, 19 How., 333.
Wright vs. *Dubois*, 21 Fed., 794.
Turner vs. *Donnelly*, 70 Cal., 597.
Moore vs. *Wilkinson*, 13 Cal., 478.
Yount vs. *Howell*, 14 Cal., 460.
Chapman vs. *Quinn*, 56 Cal., 266.
Churchill vs. *Anderson*, 56 Cal., 56.
Doll vs. *Meador*, 16 Cal., 325.

The patent is conclusive evidence of the *validity of the location* and of *proper notice of application* and of all precedent acts.

St. Louis Smelting Co. vs. *Greene*, 4 McCrary, 232, 239.

Aurora Hill Mining Co. vs. 85 *M. Co.*, 34 Fed., 515.

Talbott vs. *King*, 9 Pac. Rep., 439.

Butte City Smoke House Lode Cases, 12 Pac. Rep., 858.

All the land patented might have been lawfully granted as placer ground combined with a lode claim, for less money than was actually received by the Government, which obtained $5 per acre for the whole land patented, but under the law of 1872 could have sold the ledge and 25 feet adjacent thereto for $5 per acre, *and in the same patent* could have sold all the rest of the land as placer ground at $2.50 per acre. Surely, neither the Government nor any other person has cause to complain of the grant made to the patentee.

Sec. 2333, U. S. Rev. Stat.

All jurisdictional questions of fact were conclusively adjudicated by the patent issued under the facts appearing to the Land Office, and no contrary jurisdictional fact can be shown to impeach the record.

Smelting Co. vs. *Kemp*, 104 U. S., 636.
Irwin vs. *Schreiber*, 18 Cal., 505.
Lessee vs. *Astor*, 2 How., 339.
In re Grove St., 61 Cal., 453.
Ex parte Sterne, 77 Cal., 163.

The United States Survey and patent of public lands are conclusive upon the Court in an action of ejectment.

U. S. Land Asso. vs. *Knight*, 142 U. S.
See espeeially concurring opinion of Justice Field.
Moore vs. *Wilkinson*, 13 Cal., 478.
Yount vs. *Howell*, 14 Cal., 464.

Parley's Park Silver Mining Company (130 U. S., 256), relied upon by Judge Hawley, was a *suit in equity* by a party claiming as a *locator* of mining ground, against a patentee, where it appeared that the *facts* were correctly presented to the Land Office, and it was claimed that they erred in their construction of the local mining laws. The Court held that they did not err, but correctly decided the question before them, and that the question as to whether rules continued in force was a *question of fact* within their jurisdiction. If they had erred upon a *question of law* before them, the patent would have been controlled *in equity in favor of the owner of the better title.*

No decision upon a matter of fact, and *no decision upon a mixed question of law and fact*, can ever be considered, *even upon a proceeding in equity* to contest a patent. The patent can only be controlled *upon a legal construction of the case actually made in the Land Office.*

Quimby vs. *Conlan*, 104 U. S., 420.
Sandford vs. *Sandford*, 139 U. S., 642.

Where, as here, there is no proceeding in equity, but a pure case at law, no erroneous decision of the Land Office as to any matter of fact or law, within the purview of its jurisdiction, or to the existence of any jurisdictional fact *in pais*, whether mixed with questions of law or not, can be considered in favor of a stranger to the title.

Aurora Hill Con. M. Co., vs. 85 *M. Co.*,
34 Fed., 515, and cases before cited.

Respectfully submitted.

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